

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

ISRAEL ESPARZA PENA,)	
)	
Movant,)	
)	
v.)	CIVIL ACTION NO.
)	5:09-CV-141-C
UNITED STATES OF AMERICA,)	(Criminal No. 5:02-CR-090(01)-C)
)	
Respondent.)	USCA No. 10-10001

ORDER

By mandate of the United States Court of Appeals for the Fifth Circuit issued December 3, 2010, this case was remanded for the Court to determine whether Movant's motion filed under 28 U.S.C. § 2255 was time-barred in light of the Supreme Court's decision in *Padilla v. Kentucky*, ___ U.S. ___, 130 S. Ct. 1473 (2010).


Pursuant to 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge Nancy M. Koenig to conduct an evidentiary hearing on the issue of when Movant became aware of deportation consequences. The Magistrate Judge appointed counsel to represent Movant, conducted an evidentiary hearing, and filed findings of fact and conclusions of law. Movant filed objections to the Magistrate Judge's Findings of Fact and Conclusions of Law.

The Court hereby **OVERRULES** the Movant's Objections filed June 20, 2011; **ADOPTS** the Magistrate Judge's Findings of Fact and Conclusions of Law filed May 23, 2011; and **DENIES** and **DISMISSES** the above-styled and -numbered cause for the reasons stated in the Court's Order and Judgment filed November 4, 2009, and in the Magistrate Judge's Findings of Fact and Conclusions of Law.

Pursuant to Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), this Court finds that a certificate of appealability is denied. For the reasons set forth herein, Movant has failed to show that a reasonable jurist would find (1) this Court's "assessment of the constitutional claims debatable or wrong," or (2) "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

SO ORDERED.

Dated September 27, 2011.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE